

Memo to: Ravalli County Commissioners
From: The Streamside Setback Committee
Re: A list of frequently asked questions attached
Date: January 22, 2008

Attached is a list of frequently asked questions and responses developed, and unanimously approved, by the Streamside Setback Committee.

These questions are some that have come up in our public meetings, in conversations with individuals, or that just needed to be clarified in the opinion of the SSC.

The questions are specifically oriented toward the Interim Regulations, Draft 8, which you have, but many of the questions would still apply with a few small changes should you wish to alter the draft regulations. The committee believes that these FAQs support and clarify the draft regulations, and are a useful tool for stream setback education.

As always, we are happy to discuss with you any aspect of our work and the plan for getting it implemented.

Respectfully submitted this 22nd day of January, 2008 by:


Clay Dethliessen, SSC Chair

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Ravalli County Commissioners

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STREAMSIDE SETBACK COMMITTEE
FREQUENTLY ASKED QUESTIONS
ON DRAFT INTERIM STREAMSIDE SETBACK ZONING
REGULATIONS

Approved 01/15/08 by The Ravalli County Streamside Setback Committee

1. What is the purpose of a streamside setback?

Stream setbacks have several purposes. Protecting the stream's water quality and natural function are primary. Protecting valuable fish and wildlife habitat is a secondary benefit. This is accomplished by maintaining the function of streamside vegetation and preventing the encroachment of infrastructure on the stream. Giving the stream room to function normally protects streamside values and protects infrastructure from natural stream processes, such as bank cutting, which leads to unnatural alterations. Artificially anchoring a stream bank with rip-rap alters natural stream function and may cause problems for neighbors. Additionally, it has been generally shown that an area with zoning regulations to protect natural amenities has a measurable economic benefit for the community.

2. What waterways will be included in the setback rules?

Streams as specifically listed in Section 7 including intermittent streams. All perennial streams (naturally flowing all year) and intermittent streams (naturally flowing only part of the year) are included. The Bitterroot River will have the greatest setback and intermittent streams the smallest setback. See no. 25 below for discussion on ponds and wetlands.

3. Will there be maps of all the streams showing required setbacks?

Not for the interim regulations. It was felt that creation of maps was a much bigger task than necessary. In most cases it will be relatively easy to determine the setback distance on site, without needing a map.

4. Does the stability or height of a stream bank affect the setback? Why?

Not in the interim regulations. From a flooding perspective, a structure on a high streambank would be secure. However, streams do migrate laterally into high streambanks to the point that landowners become concerned about the safety of their homes. Certainly there are instances where a structure is on top of a rocky point and the home is safe from stream processes. The interim regulations are too general to address these limited situations, however the final regulations may be able to address this in more detail. Otherwise, the variance process would be available.

5. What is the definition of a stream?

Class 1, 2, and 3 streams are specifically listed in the interim regulations. Other perennial streams are "a stream or reach of a natural stream that, under normal precipitation conditions, flows throughout the year. Streams dewatered during part of the year by irrigations or other withdrawals, but which would flow through the year without said withdrawals, are perennial streams." An intermittent stream is "a stream or reach of a natural stream that normally flows for only part of the year in a well defined, natural channel."

6. How will existing structures be affected?

Structures outside the setbacks are not affected by these regulations. See Section 8 for a complete description of permitted uses and activities for existing structures. Generally, existing structures can be used and maintained as they always have been. Their footprint can be expanded by up to 50% of the original footprint size, as long as the expansion does not exceed 1,000 square feet. If an existing structure is somehow destroyed or damaged, it can be repaired or replaced and expanded by the same dimensions as above.

7. How will anyone know what currently exists and should be grand fathered in?

The set of base line “previously existing conditions” will be decided by comparison with dated aerial photographs, or similar detailed pictures of on site conditions taken at a given site. Detailed site maps prepared by a licensed surveyor or professional engineer may be used in lieu of, or in addition to, aerial photos.

8. What will be the effect on agricultural and irrigation operations?

The general intent of the interim regulations is to regulate new residential and commercial structures. All agricultural and irrigation related activities are specifically allowed in the stream setback zone. Weed control will be allowed within the setbacks as long as any herbicides are applied according to label instructions and guidelines from the County Weed Department.

9. How will these rules affect landscaping around a house?

Any new landscaping around a new house must remain outside of the setback zone. For the interim regulations, this may require moving the house slightly further away from the creek if a landscaped yard is desired between the creek and the house. Generally, all native vegetation including trees and bushes should remain undisturbed within the setback zone. This not only helps anchor the stream bank, but it keeps the stream water cooler and provides valuable cover for a wide variety of wildlife. Commercial timber harvest and removal of vegetation to protect property from wildfire are allowed.

10. If I have had plans for many years to build a house on a creek, will that qualify as an existing use? If the proposed project is outside the setback area, it is not affected by this regulation. If it is within a setback and no structure is present, it will be considered an existing use if there is an existing foundation, wastewater treatment system and well in the ground on the effective date of the regulation. Also it will be considered an existing use if a valid drainfield permit has been secured that specifies the location of the wastewater treatment system and the residence is not closer to the stream than the proposed drainfield setback, or the appropriate minimum stream setback distance, whichever is less.

11. Will these rules affect an existing septic tank/drainfield permit I have had for a few years?

No drainfield can be installed within 100 feet of any creek, ditch, pond or other water body, so in most cases it will already have a built in setback. If the permit is on the main Bitterroot, or East or West Forks and it is not covered in no. 10 above, it may have to be modified to be outside the setback area.

12. Are approved subdivision lots affected by this rule?

If the approved subdivision has designated setbacks, no build/alteration zones or building envelopes that were approved by the Ravalli County Board of Commissioners, it is exempt

from these regulations. If these issues were not addressed in the subdivision process, these rules will apply.

13. What are the advantages to a streamside property owner in having stream setbacks?

With proper setbacks, a home is less likely to be endangered by flooding and lateral stream channel movement. Having good fish and wildlife habitat between a home and a stream is another advantage. With proper setbacks, a landowner is less likely to be impacted by actions of other streamside owners. There can be a measurable increase in property value within a zoned area where the actions of neighbors are predictable. Plus, it has been shown that the general economy of an area increases when zoning regulations protect natural amenities.

14. Can stream banks still be rip-rapped, or otherwise anchored, to prevent bank cutting and erosion? Yes. Hopefully the setback zone would minimize the need for streambank stabilization, but in the event that it is necessary, with a valid stream alteration permit, the work may proceed.

15. What if the setback requirements eliminate all the good building sites on my property?

As with any regulation, there will always be individual cases that are unique and require special consideration. The proposed regulations have a provision for a variance procedure to help owners who don't have any good building options on a property.

16. Can I build and maintain a road within the stream setback zone?

Existing roads can be used and maintained as in original condition. New roads associated with permitted stream crossings are permitted but must be designed to minimize impacts to the area within the setback. Otherwise construction of permanent roads would be prohibited within the setback.

17. Are there any restrictions on motorized use within the setback zone?

No, as long as you are not building a new permanent road.

18. Will these rules affect my irrigation ditches and headgates? Do I need another permit to install an irrigation diversion?

No. If an irrigation diversion needs to be accessed, maintained, rebuilt, moved or a new structure built, stream setback rules do not require another permit. These routine activities may require a 124 or 310 permit but are not affected by streamside setback rules.

19. Do stream setbacks apply to irrigation ditches?

No. These rules affect new development along streams only. In Ravalli County, in some places it is not easy to tell whether a channel is a stream or ditch. Streamside setbacks will apply to the same waters governed under the Natural Streambed and Land Preservation Act (310 law). In addition, they will apply to intermittent streams, but not irrigation or drainage ditches.

20. How are the setbacks applied to creeks that flow in a ditch or man-made channel for some distance?

The criteria will be the same as for the 310 law. If irrigation water is diverted out of the stream into a man-made ditch, then setbacks will not apply to the ditch. If, however, the man-made channel essentially becomes the streamchannel because the creek was straightened into a ditch-like channel, the setbacks will apply. If a stream enters a ditch, water flows some distance in

the ditch and then exits into a streamchannel, setbacks will not apply to the portion within the ditch. This is not always a simple thing to determine, and in a few cases it will require a site specific visit and determination.

21. Can I clear trees and brush in the setback zone to create a fire break around my house?

Under the interim regulations, removal of vegetation “reasonably required” to protect property from wildfire is allowed within the setback zone. Additionally, commercial timber harvest is permitted within the setback zone, if it follows conditions of the Montana Streamside Management Zone regulations (“best management practice”). Owners are encouraged to remember that trees and shrubs are important habitat for birds and other animals, and that wholesale removal of riparian vegetation is not allowed.

22. Do these rules grant the public use of the stream setback?

No. The rules pertaining to access are not changed by stream setbacks. Public access is governed by the Montana Stream Access Law. Under the Montana Stream Access Law, the public may use rivers and streams for recreational purposes up to the ordinary high-water mark. Although the law gives recreationists the right to use rivers and streams for water-related recreation, it does not allow them to enter posted lands bordering those streams or to cross private lands to gain access to streams.

23. What is the difference between a setback and a buffer zone?

Setbacks are the distance that a structure may be built from a stream. Buffer zones are the portion of the setback that should remain relatively undisturbed. In the interim regulations, buffer zones and setbacks are the same. The buffer zone protects various resources such as water quality and fish and wildlife habitat. The setback protects the buffer zone from human activities and allows natural stream processes such as flooding and streamchannel migration.

24. What determines the amount of setback from each size of stream?

For the interim regulations, the setbacks are based on a review of scientific literature. Most scientific literature discusses buffer widths recommended to protect various resources such as water quality and temperature, ecosystem processes, and fish and wildlife habitat. Depending on the resource, recommended buffer distances vary. The distances in the interim regulations cover a range of values based on size of streams. They are:

Bitterroot River	200 feet
East Fork of the Bitterroot River and the West Fork below Painted Rocks reservoir	150 feet
Larger Creeks (listed in regulations).....	100 feet
Smaller perennial streams.....	75 feet
Intermittent streams.....	50 feet

25. What is an intermittent stream? Do setbacks apply to intermittent streams? Why?

An intermittent stream runs water only part of the year but has a well defined, natural channel. A stream that dries up due to diversion of water, but would otherwise be perennial is considered a perennial stream, consistent with the 310 law. A 50 foot setback applies to intermittent streams because even though they only flow for part of the year, they typically flow into perennial streams, so water quality is an issue. Some intermittent streams also have value for various species of wildlife.

26. How are ponds and wetlands affected?

Wetlands or natural ponds that are outside the setback are exempt from this regulation. If a wetland or natural pond exists within the stream setback, the setback must extend to at least 50 feet beyond the edge of the wetland or natural pond. In some cases this may require an overall stream setback greater than the distance required if there were no ponds or wetlands. Manmade ponds are not affected by this regulation.

27. Do these regulations constitute a taking of private property rights or values?

Obviously with the setback regulations there is some area on streamside properties that will not be available for new construction. However this is not inconsistent with other commonly accepted, and legally tested, rules and regulations. Using the County drainfield regulations as an example, there are many places that you cannot legally construct a drainfield, usually for very good reasons. But this does not mean that the entire value of a property has been “taken”. Similarly there are zoning regulations, including streamside zoning, throughout Montana and the U.S. that specify where certain types of building or land use may or may not be done. As long as some use for the property is still allowed, these regulations have been proven legal and are not considered a “taking”.

From a practical point of view, it is the intent of these stream setback regulations, that if we as a community can agree that certain property uses should be restricted in sensitive and valuable areas, the entire community will benefit and all property values increase.

28. If in the future a stream channel moves closer to an existing house than the required setback, will it be exempt from these rules?

Yes. Once a house or other building is existing, it becomes a permitted structure and that status cannot be revoked. However there are rules that limit the future expansion of that house if it is too close to the stream. After a channel moves, any new construction would have to be setback from the new channel. If you are near a stream channel that moves easily, you would be well advised to employ a professional to evaluate the building site and possibly move it well out of harm's way.

**** END OF FREQUENTLY ASKED QUESTIONS ****

Approved by the SSC 1/15/08